**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN THE MATTER OF: Chapter 13

James Daniel Thomas, Case No. 13-40995-mgd

Debtor.

James Daniel Thomas,

Plaintiff, Adv. Proc. No. _________

vs.

North Georgia Regional
Collection Agency, Inc.,

Defendant.

COMPLAINT SEEKING DAMAGES IN ADVERSARY PROCEEDING

INTRODUCTION

This is an action for damages and equitable relief based upon the Defendant's overt and intentional unlawful conduct in the furtherance of its efforts to collect a consumer debt. The Defendant's conduct is in violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*These claims arise as a result of Defendant's overt and intentional conduct.

JURISDICTION AND VENUE

1. This is a core proceeding as defined by 28 U.S.C. § 157, and this is a matter arising in a case under Title 11.

2. This Court has proper matter jurisdiction pursuant to 28 U.S.C. § 157(b) and § 1334.

3. Jurisdiction is conferred on this Court by 15 U.S.C. § 1640(e) and 28 U.S.C. §§ 1331 and 1337. Supplemental jurisdiction of the state law claims is conferred by 28 U.S.C. § 1367. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

4. The Plaintiff is a debtor in the underlying Chapter 13 pending in this Court, case number 13-40995-mgd.

5. The Defendant is a corporation organized under the laws of the State of Georgia.

6. Defendant has entered the Plaintiff's Chapter 13 alleging that it is the assignee and rightful holder of a debt originated by a third-party.

FACTUAL ALLEGATIONS

7. The Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. The Defendant markets itself as a collection agency.

9. The Defendant is a "debt collector" as defined by 15 U.S.C. § 1692a(5) and (6)

10. On April 8, 2013, Plaintiff's Chapter 13 proceeding was commenced by the filing

of a voluntary petition with the Clerk of this Court.

11. On March 16, 2016, Defendant filed Proof of Claim Number 12 in the amount of $483.85 alleging that it is the agent for collection of a debt originated by a third-party.

12. Attached to Defendant's POC is what appears to be an itemization describing medical services rendered by two separate medical providers, dates of service, and charges. POC 12, pages 4-5.

13. Thus the Defendant's proof of claim is seeking collection of multiple individual debts.

14. The debts referenced in Defendants' POC are "consumer debts" as defined by 15 U.S.C. § 1692a (3) and (5).

15. The alleged debt giving rise to Defendant's claim is governed by the 4-year statute of limitation set forth in O.C.G.A. § 9-3-25.

16. All but one of the charges contained in Defendant's itemization are more than four years old from the date of service.

17. All but one of the charges being collected by the Defendant are time-barred as a matter of law.

DAMAGES

18. As a result of Defendant's actions, Plaintiff has suffered actual damages, including time expended in consulting with counsel regarding the Defendant's

unlawful claim; consumption of resources in the form of his attorney time and resources in challenging an unlawful claim; potential harm through possible payment of an unenforceable clam; and worry over the repercussions of Defendant's unlawful conduct.

FIRST CLAIM FOR RELIEF -- OBJECTION TO CLAIM

19. Plaintiff repeats and realleges paragraphs 1-17 as though more fully set forth herein.

20. The Debtor objects to Defendant's proof of claim on the grounds that it is time-barred as a matter of law per the supporting documentation filed by the Defendant and is therefore objectionable under 11 U.S.C. § 502(b)(1) and should be disallowed.

COUNT I

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT ("FDCPA")
15 U.S.C. § 1692, *et seq*.

21. Plaintiff repeats and realleges the preceding paragraphs 1-18 as though more fully set forth herein.

22. Defendant's filing of its POC was an attempt to collect a consumer debt.

23. The Defendant has made numerous false, deceptive and misleading statements in its attempt to collect a consumer debt in violation of 15 U.S.C. §§ 1692e and 1692f.

24. The 11th Circuit has previously ruled that filing a proof of claim to collect a stale

debt violates the FDCPA including Sections 1692(d), 1692(e) and 1692(f). See, *Crawford v. LVNV Funding, LLC*, 2014 U.S. App. LEXIS 13221 (11th Cir. Ala. July 10, 2014).

25. The acts and omissions by Defendant constitute violations of the FDCPA including, but not limited to, collecting or attempting to collect amounts not permitted by law and by otherwise using unfair and deceptive methods in direction violation of 15 U.S.C. 1692f(1).

26. The Plaintiff has suffered actual damages as a result of Defendant's conduct as described herein.

27. As a result of Defendant's violations of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages in the amount of $1,000.00, costs of this action and reasonable attorney's fees as determined by the Court as mandated by 15 U.S.C. § 1692k.

WHEREFORE, the Plaintiff having set forth his claims for relief against the Defendant respectfully prays of the Court as follows:

A. That Proof of Claim Number 12 be disallowed;

B. That the Court award actual damages in an amount to be shown at trial, statutory damages in the amount of $1,000.00, costs and reasonable attorney's fees as determined by the Court pursuant to 15 U.S.C. § 1692k; and

C. That the Court award reasonable attorney's fees and expenses pursuant to 15 U.S.C. § 1692k; and

E. That the Plaintiff have such other and further relief as the Court may deem just and proper.

This the 21st day of November, 2016.

Respectfully submitted,

*/s/ Matthew T. Berry*_________
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